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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 8th September 1954

S.R.O. 3184.—Whereas the elections of Sarvashri Ram Parkash and Rattan Anmol Singh as members of the Legislative Assembly of the State of Punjab from the Molana constituency of that Assembly has been called in question by an election petition presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Atma Ram, s/o Shri Phagu Ram, resident of Balmik Bazar, Ambala city;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

Now therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

On an appeal filed by Sarvashri Rattan Anmol Singh and Ram Parkash the Supreme Court has set aside the said Order of the Tribunal declaring the elections of the two successful candidates to be wholly void *vide* the Supreme Court's judgment dated the 21st May, 1954 (Annexure I).

BEFORE THE ELECTION TRIBUNAL, LUDHIANA.

Harbans Singh, Barrister-at-Law—*Chairman.*

Hans Raj Khanna, B.A., LL.B.—*Judicial-Member.*

Parma Nand Sachdeva, B.A., LL.B.—*Advocate-Member.*

ELECTION PETITION NO. 153 OF 1952.

Ch: Atma Ram son of Ch: Phagu Ram, caste Balmiki (Schedule caste) resident of Balmik Bazar, Ambala City.—*Petitioner.*

Versus

1. Shri Ram Parkash son of Shri Shadi Ram, Village Adhoya, P. S. Molana, District Ambala.

2. Shri Rattan Anmol Singh son of Shri Lachhman Singh, Fort Buria, P. O. Jagadhari, District Ambala.

3. Shri Behari Lal son of Shri Uttam Chand.

4. Shri Kuldip Singh son of Shri Kishen Singh, Kuldip Nagar, of Ambala Cantt:

5. Shri Maharaj Singh son of Shri Atma Ram, V. Mohli, P. O. Brara, Dist Ambala.

6. Shri Jaigopal son of Shri Girdhari Lal Durals, P. O. Kiron, District Ambala.

7 Shri Nand Kishore son of Shri Rullia Ram, Molana, District Ambala.

8. Shri Rattan Singh M.L.A. son of Shri Nirmal Singh Bheita, District Ambala.

9. Shri Shamsher Singh son of Shri Nirmal Singh, Molana, District Ambala.

10. Shri Balwant Singh son of Shri Bishen Singh, Molana, District Ambala.

11. Shri Gainda Ram son of Shri Nath, Ambala City.

12. Shri Telu son of Shri Baru, V. Hussainpura, P. S. Sundhara, District Ambala.

13. Shri Ram Singh son of Shri Chand Singh, Nagar, Tehsil Nagar, District Ambala.

14. Shri Nauhria Ram.

15. Shri Shanker Lal.

16. Shri Raghbir Singh.

17. Shri Fateh Singh.

18. Shri Dasaundha Singh.

19. Shri Dharm Pal.

20. Shri Ganda Ram—*Respondents.*

For Shri Atma Ram, petitioner—

M/S. Chuni Lal Sahni and Dev Raj Hidha, Advocates.

For Shri Ram Parkash, respondent No. 1—

M/S. H. S. Doabia and J. L. Kapur, Advocates.

For Shri Rattan Anmol Singh, respondent No. 2—

Shri Lakshmi Chand, Advocate.

For Shri Maharaj Singh, respondent No. 5—

Shri Rajinder Nath, Pleader.

Shri S. M. Sikri, Advocate General, Punjab State, assisted by Shri Balak Singh Bagga, Local Government Pleader, appeared for the State on 13th December 1952.

ORDER—(*For Hans Raj Khanna, Member.*)

In the last elections, Shri Ram Parkash, respondent No. 1, was elected from the reserved seat and Shri Rattan Anmol Singh, respondent No. 2, was elected from the general seat of the Molana Constituency of Ambala and Simla Districts to the Punjab Legislative Assembly. The petitioner Chaudhri Atma Ram was one of the candidates in that Constituency of the reserved seat. The petitioner, it is alleged, was given the Congress ticket to contest the election. The petitioner filed four nomination papers on the 5th of November, 1951. Each of the nomination papers of the petitioner, it is alleged, was subscribed by a proposer and a seconder, whose names are given in para. No. 7 of the petition and all the proposers and seconders of the petitioner affixed their thumb-marks in token of their subscribing the same.

2. On the 9th of November, 1951, the date of scrutiny, objections were raised on behalf of Shri Ram Parkash, respondent, that on the nomination papers the thumb marks of the proposers and seconders of the petitioner had not been certified to have been made in the presence of the Returning Officer, Presiding Officer, or even a Magistrate as provided in sub-rule (2) of rule 2 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, and as such the nomination papers were invalid. The Returning Officer upheld the objection and rejected the nomination papers. Subsequently, it is alleged, Shri Telu Ram was adopted by the Congress as its nominee. The elections were later held in which Shri Ram Parkash and Shri Rattan Anmol Singh were declared elected from the Constituency. Chaudhri Atma Ram, petitioner, thereupon filed the present Election Petition.

3 Another Election Petition 'Shri Maharaj Singh, *Versus* Shri Rattan Anmol Singh' has also been filed questioning the election of Shri Rattan Anmol Singh, but as the grounds of that petition are different, that petition has been dealt with separately.

4. It is stated by the petitioner that all the proposers and seconders of the petitioner were present with him at the time of delivering the nomination papers and offered themselves for identification and requisite attestation. It is also alleged that the Returning Officer checked the names and satisfied himself as to their identity, but failed to attest their thumb impressions. It is further alleged that on the date of scrutiny also the proposers and seconders of the petitioner were present and told the Returning Officer that they had thumb marked the nomination papers of the petitioner and that their thumb impressions might be attested. It is stated that in spite of that the Returning Officer rejected the nomination papers of the petitioner. It is further stated that, at any rate, there was no defect of substantial nature in the nomination papers of the petitioner and that the defect, if any, was merely a technical one, which did not entitle the Returning Officer to reject the nomination papers. The petitioner also stated that there had been no failure to comply with the provisions of Section 33 by the petitioner. It was further stated that the rejection of the petitioner's nomination papers had materially affected the result of the election. It was prayed that the election be declared void.

5. The petition is contested by respondents Nos. 1 and 2, returned candidates. These respondents, who will hereinafter be referred to as respondents, denied that the proposers and seconders of the petitioner were present, either on the date of nomination, or on the date of scrutiny. It was also denied on behalf of respondent No. 1, that the proposers and seconders of the petitioner had affixed their thumb marks on the nomination papers of the petitioner. It was further stated that the petitioner commanded no popularity in the Constituency and that the financial position of the petitioner was not sound. It was also stated that the petitioner was merely a puppet in the hands of Shri Jaswant Rai Ex.-Member of Parliament, whose object was to secure undue advantage for himself through the instrumentality of the petitioner. It was also alleged that the petitioner had not impleaded Shri Bhola, a duly nominated candidate, as a party to the petition and for that reason the petition was defective. The following two preliminary issues were framed:

(1) Whether Bhola, Harijan, resident of Beehta Tehsil and District Ambala, was a duly nominated candidate and as such a necessary party?

(2) What is the effect of non-joinder of Bhola as respondent?

These issues were decided by the order of the Tribunal, dated the 11th of October, 1952, and that order shall be read as part of this order. By that very order, the following two issues were framed:

(1) Is the petitioner merely a puppet coming forward in the interests of somebody else and if so, what is its effect on the maintainability of the petition?

(2) Was the nomination paper of Shri Atma Ram, petitioner, improperly rejected? If so, has it materially affected the result of the election?

Issue No. 1.—On this issue, there is no evidence on the record to show that the petitioner is a puppet in the hands of somebody. The respondent has led evidence to show that the petitioner was an employee in the Sanitary Department of the Ambala City and that his financial position was not sound. Assuming, that the petitioner's financial status is not very good, it does not follow from this that the petitioner is a puppet in the hands of somebody. There is no direct evidence of the petitioner acting as the henchman of some person. Issue No. 1 is, therefore, decided against the respondents.

Issue No. 2.—The first question that arises for determination is whether the nomination papers of the petitioner were in fact thumb marked by the various persons by whom they purported to have been thumb marked as proposers and seconders of the petitioner. The petitioner filed four nomination papers. One nomination paper purported to have been thumb marked by Shri Pritam, P.W. 6, as a proposer and Shri Faqiria, P.W. 7, as a seconder. The second nomination paper purported to have been thumb marked by Shri Bakhtawar, P.W. 12, as a proposer and by Shri Mansuri, P.W. 13, as a seconder. The third nomination paper purported to have been thumb marked by Shri Shera, P.W. 10, as a proposer and by Shri Sadhu son of Shri Bagga, P.W. 11, as a seconder. The fourth nomination paper purported to have been thumb marked by Shri Sadhu son of Shri Maru, P.W. 8, as a proposer and by Shri Sadhu son of Shri Gainda, P.W. 9, as a seconder. The petitioner has led evidence of all his proposers and seconders, mentioned above, who have deposed with regard to their having thumb marked the nomination papers of the petitioner. The petitioner has also

himself, as his own witness, deposed that his nomination papers were in fact thumb marked by his proposers and seconders in his presence. Even at the time of scrutiny, when objections were raised to the nomination papers of the petitioner, the objection was only under section 36, clause (d), of the Representation of the People Act, 1951, for failure to comply with the provisions of Section 33 of the Representation of the People Act and not under clause (e), which deals with the ground that the signatures of the candidate, or any proposer or seconder, are not genuine and have been obtained by fraud. Indeed, at the time of arguments, it was not contended before us that the thumb marks of the various persons by whom the nomination papers of the petitioner purported to have been thumb marked were not in fact of those persons.

6. The nomination papers of the petitioner were rejected on the ground that he had failed to comply with the provisions of section 33 of the Representation of the People Act, inasmuch as he failed to get the thumb impressions of his proposers and seconders attested in accordance with Rule 2, sub-rule (2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951, hereinafter referred to as the Rules. The rejection was under Section 36, sub-section (2), clause (d), of the Representation of the People Act, 1951, hereinafter referred to as the Act. Sub-section (2) of Section 36 of the Act runs as under:

(2) The Returning Officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination, and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, refuse any nomination on any of the following grounds:

(a) that the candidate is not qualified to be chosen to fill the seat under the Constitution or this Act; or

(b) that the candidate is disqualified for being chosen to fill the seat under the Constitution or this Act; or

(c) that a proposer or seconder is disqualified from subscribing a nomination paper under sub-section (2) of section 33; or

(d) that there has been any failure to comply with any of the provisions of section 33 or section 34; or

(e) that the signature of the candidate or any proposer or seconder is not genuine or has been obtained by fraud.

7. The question that arises is whether it was essential to get the thumb marks of the proposers and seconders attested in accordance with rule 2, sub-rule (2) of the Rules. Section 33 of the Representation of the People Act provides *inter alia* as under:

(1) On or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer or seconder, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder.

(2) Any person whose name is registered in the electoral roll of the constituency and who is not subject to any disqualification mentioned in section 16 of the Representation of the People Act, 1950 (XLIII of 1950), may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled but no more.

8. A perusal of the wording of the section shows that the nomination paper should be subscribed by two persons as a proposer and a seconder. The question arises as to what is the meaning of the word "subscribe". The learned counsel for the respondent No. 1 has argued that the word "subscribe" is equivalent to the word "sign". Further, it is contended that the word "sign" has been defined in section 2, clause (k) of the Act as under:

"(k) "sign" in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed;"

Sub-rule (2) of rule 2 provides:

"For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper

if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such other officer as may be specified in this behalf by the Election Commission and such officer on being satisfied as to his identity has attested the mark as being the mark of such person."

It would thus appear that the definition of the word "sign" as given in the Representation of the People Act and as given in the General Clauses Act are a little different. Under the General Clauses Act, 1897, Section 3, clause 52, the word "sign" has been defined in clause 52 as under:

" 'Sign' with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark" with its grammatical variations and cognate expressions.'

A comparison of the definitions of the word "sign", as given in the Representation of the People Act and as given in the General Clauses Act, shows that the definition given in the former Act is restrictive. Thumb mark of an illiterate person to constitute signature under the Representation of the People Act must also be attested by an officer. The definition thus also departs from the ordinary and the general meaning of the word. The dictionary meaning of the word "sign" is to "affix one's name or initials or recognized marks".

The question arises whether the word "subscribe", as used in section 33 of the Act, should be held as equivalent to the word "sign" as used in special sense, as defined in the Representation of the People Act, or whether it should be held equivalent to the word "sign" as used in the General Clauses Act. According to its ordinary meaning, on page 135 of *Parker's Election Agent and Returning Officer,* it has been laid down as under:

" 'Subscribe' means to write under something (Attorney General. *Vs.* Bradlaugh, 54 L.J.Q.B.213) to give consent to something written by signing one's name underneath."

It has been further laid down on page 136 of the above:

"The subscription of the proposer, seconder and assenters need not be written in full and may be their ordinary signatures, but such signatures must be affixed personally and not by an agent or per procuration. (See Tomos Cuning 7 M. & G. 88, 1 Lutw. 200). There is no provision for or against subscription by an illiterate elector and such elector may, it is submitted, subscribe by a mark in the usual manner. The initials of a Christian name are only sufficient."

9. In my opinion, as the definition given in the Representation of the People Act of the word "sign" is restrictive and the expression used in section 33 is "subscribe", the word "subscribe" should be held equivalent to the word "sign" in its ordinary meaning and as used in the General Clauses Act and not as defined in the Representation of the People Act. The principle is well established that a restrictive Statute should be construed strictly and unless the facts of a case clearly fall within the four-corners of the wording of the Act, an interpretation favourable to the subject should be given. Likewise, the principle is established that a Statute which effects a departure from the ordinary law must be construed strictly in favour of the subject relying on ordinary law.

10. It is significant that the word used in Section 33 is the word "subscribe" and not the word "sign". If it was intended by the Legislature that the thumb marks of the proposer and seconder on the nomination papers should be attested, as required by rule 2, there was nothing to prevent the Legislature from using the word "sign" in section 33 of the Act. Reference in this connection may also be made to section 48 of the Act, where referring to the revocation of the appointment of the Polling Agent, it is stated revocation of appointment shall be "signed" by the candidate or his election agent. Again in rule 12 relating to the appointment of Polling Agent and rule 13 relating to the appointment of Counting Agent, it is stated that the letter of appointment of the Polling Agent and the Counting Agent should be "signed" by the candidate or his Election Agent.

11. There is one other aspect of this case and it is that the Constitution of India give right of franchise to every adult in the country. Articles 325 and 326 of the Constitution of India run as under:

"325. There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall

be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them".

"326. The elections of the House of the People and to the Legislature Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than the twenty one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election".

12. The object of the Constitution was to give a right of franchise to every individual. Unlike some of the previous statutes, the Constitution imposed no restriction on the right of being an elector on the ground of illiteracy. The scheme of the Representation of the People Act also is such that illiterate voters should have no difficulty in exercising their right. The introduction of symbols for candidates in the Elections has also been introduced for that very purpose. In case a restrictive meaning of the word "subscribe" were to be placed, it would have the effect of imposing some difficulties in the way of illiterate electors which would be repugnant to the object of the Act. It has been laid down by Maxwell in Interpretation of Statutes, on page 236 as under:

"Whether the language of a statute, in its ordinary meaning and grammatical construction leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammer, by giving an unusual meaning to particular words, by altering their collocation, by rejecting them altogether, or by interpolating other words, under the influence, no doubt, of any irresistible conviction that the Legislature could not possibly have intension of the Legislature".

In a recent case *Seaford Court Estates Ltd., Versus Asher,* (1949 2 All. E.R. *at p.* 164, *Denning L.J.*) observed that:

"in the absence of it (clarity), when a defect appears, Judge cannot simply fold his hands and blame the draftsmen. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and he must supplement the written word so as to give force and life to the intension of the Legislature."

I would, therefore, hold that the nomination papers of the petitioner thumb marked by his proposers and seconders should be deemed to have been subscribed by these proposers and seconders, even though those thumb marks were not attested, as required by rule 2.

13. Assuming, for the sake of argument, that the word "subscribe" was used as equivalent to the word "sign" as defined in the Representation of the People Act, 1951, and the provisions of section 33 were not strictly complied with by the petitioner, the question arises whether the nomination papers of the petitioner should have been rejected. According to section 36, sub-section (4) of the Representation of the People Act, 1951:

"The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character."

The point for determination is whether the absence of attestation was a technical defect, not of a substantial nature. The dictionary meaning of the word "technical difficulty" is as under:

"A difficulty arising in connection with the method of procedure (especially legal)."

14. It is not disputed that the nomination papers were thumb marked by the proposers and seconders. It is also not disputed that those proposers and seconders were duly authorized to propose and second. The petitioner has led evidence before us to show that his proposers and seconders were present before the Returning Officer, both on the date of nomination as well as on the date of scrutiny, and that this fact was brought to the notice of the Returning Officer. The respondent No. 1 has led evidence to show that it was not so. The Returning Officer Shri D. N. Bansal, denied that their presence was brought to his notice. The Returning Officer further stated that he would not have attested the thumb impression and overlooked the defect, if a request had been made to him on the date of scrutiny, to attest the thumb impressions of the proposers and seconders, as according to the Returning Officer, this was contrary to the rules. Assuming the fact that the presence of proposers and seconders was not brought to the notice of the Returning Officer, the fact remains that the nomination papers were thumb marked by proposers and seconders by whom they purported to be thumb marked.

15. In Aligarh, Mathra and Agra Districts (2.H. T.E.P.14) the question arose whether the omission of date in the declaration of a candidate by the candidate rendered the nomination paper invalid. It was held that it was only a technical irregularity and no more than an unsubstantial departure from the Law.

Rule 5 requires that the nomination papers should be accompanied by a declaration in writing specifying the preference of a candidate for three symbols out of the symbols published by the Election Commission. A letter was, however, sent by the Election Commission on 10th November, 1951, in which it was stated:

> "Sub-section (4) of section 36 of the Representation of the People Act, 1951, provides that no nomination paper shall be rejected on a technical ground. Without encroaching on the discretion of the judgment of the Returning Officer, the Commission may observe that in its opinion any such defect in the matter of choice of symbols is technical in nature inasmuch as the assigning of symbols is a matter ultimately within the discretion of the Returning Officer who may, if he so thinks, assign a symbol to a candidate which is outside the list of three symbols that a candidate has selected while filing his nomination paper. The Commission will be grateful if this opinion of the Commission is communicated to the Returning Officers for their information."

16. The provisions of the Transfer of Property Act, with the exception of a few sections that apply to particular areas, have not been made applicable to the Punjab. It has, however, been laid down in a long chain of authorities that the principles of that Act apply to the Punjab but not its technical provisions. A perusal, of the authorities that lay down that the technical provisions of the Act do not apply, shows that the provision that require a formality to be complied with in doing a particular Act have always been deemed to be technical. For example the Transfer of Property Act requires that an assignment of debt in order to be valid must be in writing but it was held in A.I.R. 1925 Lah: 575, 1932 Lah: 30 and 1936 Lah: 547 that this provision of law was technical and did not apply to the Punjab. In A.I.R. 1928 Lah: 148 the provisions of Transfer of Property Act regarding attestation of deeds were considered to be technical and as such were held not to be applicable to the Punjab.

I, therefore, hold that the provision that the thumb mark in order to constitute as signature should be attested, must also be regarded as technical.

My finding, accordingly, is that the failure of the petitioner to get the thumb mark of his proposers and seconders attested, as required by Rule 2, was at the most only a technical defect.

The next question that arises is whether the defect was not of a substantial nature. As the thumb marks on the nomination papers were genuine, the defect, in my opinion, was not of a substantial nature. The Election Law aims at exclusion of frauds being practised on the Returning Officer. The object in getting the thumb marks attested by an officer apparently was to exclude the possibility of forged thumb marks. Where, however, there is evidence to show that the thumb marks were genuine, the defect would be, in my opinion, only technical and not of a substantial nature. In any case, as the scheme of the Act is to give right of franchise to every adult, an interpretation in consonance with the Act should be

arrived at. In the conclusion that I have reached I am fortified by the observations that have been made on pages 127 to 129 of Indian Election and Election Petitions, Volume 1 by O.B.L. Srivastava (1951 Edition). The observations are based upon authorities mentioned therein. It would be useful to reproduce some of those observations:

> "A defect, in order to be a ground for the rejection of a nomination paper, must be a material one; and whether a defect is a material one or not will depend upon the particular facts of each case, though of course decided cases will furnish good practical guidance.
>
> To judge if a defect is material or not, the object underlying the prescribing of a particular form for the nomination paper and requiring specified particulars in it must be known. The object is, to ensure that the identity and eligibility of the candidate, the proposer and the seconder, and, possibly, the identity of the constituency in which candidature is sought, are known by means of the particulars given, without difficulty and without the need of any long or detailed inquiry. Therefore, as was remarked in Samastipur (N.N.R.), if this object can be achieved even without strict adherence to the form by the particulars given therein it would be contrary to justice, equity and good conscience to invalidate the nomination paper and to deny the elector a fair and free opportunity of electing a candidate according to his preferences. On that very basis it was held in Saharanpur District North (N.R.) 1946 that where the nomination paper contains particulars sufficient to identify a candidate, there was substantial compliance with the requirements of law. Courts are, and should be loath to reject nomination papers merely on misdescriptions or omissions which are not material and trivial misdescriptions should be condoned."

It has been further laid down that:

> "generally recognized rule is that meticulous accuracy is not necessary and substantial compliance with the rules should be regarded as sufficient. In the matter of omission also that is where some particulars required to be given are inadvertently left out, it should be seen if the omission is material or not. If it does not raise any doubt or the doubt is easily capable of resolution, such omission should not be made a ground for rejection of the nomination paper."

In a recent case decided by this Tribunal, Shri Suraj Mal etc., Versus Shri Teg Ram, we held that the omission to mention the name of sub-division of Constituency in the nomination papers was a technical error which did not justify the rejection of nomination paper.

I, therefore, hold that the nomination papers of the petitioner were improperly rejected.

17. The respondent has led evidence to show that the petitioner is not a man of much influence and has not participated much in political activities. The respondent has further led evidence to show that the Congress Organization did its best to support Ch. Telu Ram, who was a Congress nominee, and in spite of that Chaudhri Telu Ram was defeated. The petitioner, however, has produced Chaudhri Telu Ram, who stated that the petitioner exercised much more influence than him. The law is well established that in case of improper rejection of the nomination paper, the presumption is that the rejection has materially affected the result of the election and the onus is very heavy on those who want to establish that the result has not been materially affected. In the present case, the evidence adduced by the respondent has failed to discharge that onus. Indeed Shri Hans Raj (R.W. 5), one of the witnesses of the respondent, has stated that the petitioner had good chances, because he had the Congress ticket. I, therefore, hold that the result of the election has been materially affected by the improper rejection of the nomination papers.

18. The next question that arises is whether the Election should be declared void as a whole, or whether the election of only Shri Ram Parkash, respondent No 1, should be declared void. It was a double member constituency, though one was a general seat and the other was a reserved seat. In my opinion, the rejection of the nomination papers of the petitioner should be deemed to have affected the result of the election as a whole. In case, Nagjibhai Govindbhai Arya Versus Mithabhai Ramji Chawhan, published in the Gazette of India, dated the

11th of August, 1952, the Tribunal relying on case reported in 58 Calcutta 87 set aside the election of the candidates returned both from the General and Reserve seats in similar circumstances. The respondent No. 1 put in an application that the petitioner had not prayed for setting aside the election of respondent No. 2. In my opinion, the petitioner has nowhere confined his petition to setting aside the election of respondent No. 1 only. The petitioner's grievance is that his nomination papers were not properly rejected and, therefore, that fact had materially affected the election. The petitioner's prayer was that the election be declared void. According to Section 100, Sub-Section (1)(c) if the result of the election has been materially affected by improper rejection of a nomination paper, the Tribunal should declare the election to be wholly void.

1. therefore, accept the petition. I declare the election of respondents Nos. 1 and 2 to the Punjab Legislative Assembly to be wholly void. In the peculiar circumstances the parties are left to bear their own costs. The respondents 1 and 2 shall, however, pay in equal shares Rs. 100 as costs to the Advocate-General, Punjab, and Rs. 50 to the local Government Pleader, who assisted him in the proceedings.

(Sd.) HANS RAJ KHANNA,
Judicial Member,
Election Tribunal, Ludhiana.

Dated, Ludhiana, June 24, 1953.

Shri Atma Ram

Versus

Shri Ram Parkash etc.,

(Per Parmanand Sachdeva, Advocate-Member)

I had the benefit of going through the two different orders proposed to be passed in this case by my learned colleagues. I have very carefully and closely studied these and after giving my anxious consideration to the various arguments, advanced by my learned colleagues to support their findings on Issue No. 2, I am inclined to agree to the view that the nomination papers of Shri Atma Ram, petitioner, were improperly rejected especially in view of the following outstanding aspects of the case, and this has materially affected the result of the election.

(a) There is the unanimous testimony of the various proposers and seconders supported by the sworn statement of the petitioner that all the nomination papers of the petitioner were duly filled in and thumb marked by the concerned persons on the 5th November, 1951, outside the court room of the Returning Officer immediately before being presented to the said Officer and that all the proposers and seconders together with the petitioner were present in the court room of the Returning Officer both on the 5th November, 1951, at the time of their presentation and on the 9th November, 1951, at the time of scrutiny. This fact has not been and could not possibly be specifically contradicted by the Returning Officer in his detailed statement as R.W. 13. This leaves no room for doubt that all the nomination papers were duy subscribed by the various proposers and seconders themselves.

(b) The provision, laid down in rule 2 sub-rule (2) of the Rules with respect to the authentication or verification of the thumb marks of the proposer and the seconders, who are unable to write their names on the nomination papers, in my opinion, is not a mandatory one but is only directory. It is only the statutory provisions of a Law which are mandatory but the rules, made thereunder, are only directory. This rule appears to have been actuated, more or less by way of caution or safety valve to ensure that the thumb impressions of proposers and seconders, who are unable to write their names, are genuine and not forged and thus not liable to dispute. No objection having been raised before the Returning Officer regarding the genuineness of the thumb impressions on the scrutiny day, the provision with regard to authentication or verification of these thumb impressions could not be legitimately invoked either on the date of nomination or the date of scrutiny. The personal presence of all the proposers and seconders in court at the time of scrutiny, as conclusively established by their evidence, was a further guarantee to prove the genuineness of their thumb impressions. In

case any such objection had been taken, all the proposers and seconders were on the spot to make a statement and prove the genuineness of their thumb marks.

(c) In the prescribed Form of nomination there are some foot notes and directions, given for the guidance of the candidates especially the illiterate persons. In case provision, contained in rule 2 sub-rule (2) regarding the authentication or verification of the thumb marks, was considered very important and mandatory, this ought to have been entered in the instructions or the foot notes under the prescribed Form; especially for the guidance of illiterate persons who had to get their thumb impressions verified in the manner. The very fact, that this does not find any mention in these instructions or the foot notes, appended to the nomination form, shows that this was not considered important.

(d) The omission, to get these marks authenticated or verified as required by rule 2 sub-rule (2) of the Rules, is, in my opinion, a mere technical defect which is not of a substantial character. This being the first regular election of the Republic of India based on adult franchise according to the Constitution, there is no restriction or bar on the right of any citizen of sound mind not less than 25 years of age to stand as a candidate on the ground of illiteracy. Every facility appears to have been given to illiterate masses for the exercise of their right of franchise and the scheme of the Act also shows that illiterate voters should have no difficulty at all in exercising this right. It would thus be against the very spirit of the Constitution and the scheme of the Act to treat the provision contained in rule 2 sub-rule (2) regarding the authentication and verification of the thumb marks as a mandatory one and its non-compliance a fatal defect to justify the rejection of nomination papers. This will be opposed to the clear and mandatory provision contained in section 36(4) of the Act which is to the effect that:

> "Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character."

In view of the above I agree to the order proposed to be passed in this case by my learned colleague, Shri Hans Raj Khanna, Judicial-Member, and with due respects to the learned Chairman (Sardar Harbans Singh), I do not agree to the order proposed to be passed in this case by him.

The result is that this petition is accepted and the election of the double-member constituency in this case is declared to be wholly void.

I also agree with the order regarding costs proposed by Shri Hans Raj Khanna, Judicial-Member.

(Sd.) P. N. SACHDEVA,
Advocate-Member,
Election Tribunal, Ludhiana.

June 24, 1953.

Ch. Atma Ram *vs.* Shri Ram Parkash etc.

ORDER (Per S. Harbans Singh, Chairman).

This is a petition filed by Ch. Atma Ram for a declaration that the election of Molana Constituency of Ambala District of the Punjab Legislative Assembly, held in 1951-52 from which Shri Ram Parkash, respondent No. 1, was declared elected from the Reserved Seat and Shri Ratan Amol Singh, respondent No. 2, from the General Seat, was void as a whole.

There is another petition (Shri Maharaj Singh *Versus* Shri Ratan Amol Singh) No. 302 of 1952, filed by Shri Maharaj Singh seeking a similar declaration with regard to this very election. However, the grounds, on which the propriety of the election is challenged in these two applications are entirely different. The evidence was, therefore, recorded in these two petitions separately and it would be more convenient to dispose of the present petition by a separate order.

Ch. Atma Ram, petitioner, filed four nomination papers for contesting election from this Constituency for the Reserved Seat. All these four nomination papers were rejected by the Returning Officer under Clause (d) of sub-section (2) of Section 36 of the Representation of the People Act, 1951, (hereinafter referred to

as the Act) on the ground that the thumb impressions of the proposers and seconders had not been authenticated as provided by sub-rule (2) of rule 2 of the Representation of the People (Conduct of Election and Election Petitions) Rules, 1951, (hereinafter referred to as the Rules).

The contention of the petitioner was that the nomination papers were improperly rejected because the defect, if any, was of a technical nature and of an insubstantial character. He further contended that while filing the nomination papers, he had taken with him into the Court Room of the Returning Officer all his proposers and seconders and that he informed the Returning Officer of their presence in Court, and that the Returning Officer did not care to ask them any question. He further alleged that all his proposers and seconders were similarly present on 9th of November, 1951, the date of scrutiny, and that when the objection was taken against his nomination papers he and his counsel, informed the Returning Officer that the proposers and seconders were present in court and that the proposers and seconders also stated that they had "subscribed" the nomination papers and that in fact there was no doubt about the genuineness of the thumb impressions of the various proposers and seconders. The respondents took up an objection against the maintainability of the petition on the ground that some of the duly nominated candidates had not been made parties to the petition. The following issues were, therefore, tried as preliminary issues:

1. Whether Shri Bhola, Harijan, resident of Beehta, Tehsil and District Ambala, was a duly nominated candidate, and as such a necessary party?

2. What is the effect of the non-joinder of Bhola as respondent?

These were decided by an order of the Tribunal, dated the 11th of October, 1952, and that order shall be read as a part of this order. By that very order two other issues were settled on merits as follows:

1. Is the petitioner merely a puppet coming forward in the interests of somebody else, and if so, what is its effect on the maintainability of the petition?

2. Was the nomination paper of Shri Atma Ram petitioner improperly rejected? If so, has it materially affected the result of the election?

Issue No. 1.—No direct evidence has been led by the petitioner on issue No. 1. During the examination of various witnesses, however, it was suggested that the petitioner was not a man of much substance and that till recently, was an employee in the Municipal Committee of Ambala City as a Class IV Servant and as such hardly possessed of any influence. However, from these vague suggestions it is not possible to infer that the petitioner is fighting the battles of some other person; and even if it be held that he has brought this petition at the instance of somebody else, it was not suggested that, that would make any difference to the maintainability of the same. In fact this issue was not even touched upon by the counsel for the respondents during the final arguments. This issue is, therefore, decided in favour of the petitioner.

Issue No. 2.—The method of presentation of nomination papers and requirements for a valid nomination, are laid down in Section 33 of the Act. The relevant portion of sub-section (1) of Section 33 of the Act reads as follows:

> "On or before the date appointed each candidate shall, either in person or by his proposer or seconder deliver to the Returning Officer a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconders."

Sub-section (2) relates to the persons who could be the proposers or seconders. In the present case it is not denied that the nomination papers, filed by the petitioner, were in the prescribed form and purported to be subscribed by persons who were qualified to be the proposers and seconders. The objection taken against these papers was that they had not been properly "subscribed" by the proposers or seconders. The proposers and seconders of all the four nomination forms filed by the petitioners were illiterate and they had put their thumb impressions against the respective columns requiring the signatures of proposers and seconders. The word "subscribe" is not defined anywhere, and, therefore, must be taken in its ordinary dictionary meaning as equivalent to "sign". The argument, addressed on behalf of the petitioner, was that the word "sign" includes even a thumb mark and that the requirements of the Act were fully complied with by the proposers

and seconders in putting their thumb marks on the nomination paper. Reliance was placed, in this respect on Clause (52) of Section 3 of the General Clauses Act (X of 1897) which runs as follows:

> "sign", with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include "mark", with its grammatical variations and cognate expressions:

If this definition were to govern the case, putting of thumb impressions would be equivalent to and on the same footing as, writing ones name. The word "sign", has, however, been defined in Clause (k) of sub-section (1) of Section 2 of the Act, differently from the General Clauses Act, as follows:

> "sign", in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed."

The manner of authentication is prescribed in sub-rule (2) of Rule 2, as follows:—

> "For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the Presiding Officer or such other officer as may be specified in this behalf by the Election Commission and such officer on being satisfied as to his identity has attested the mark as being the mark of such person."

According to this, the only way, in which an illiterate person can be said to have *signed* a nomination paper, is when he puts his "mark" on the relevant paper *in the presence* of the Returning Officer or other officer specified in this behalf, and such officer, on being satisfied as to the identity of the person concerned, attests that "mark" as being the "mark" of that person.

It was, however, suggested that the word "subscribe" used in sub-section (1) of Section 33, should be interpreted in a liberal sense, in which the word "sign" is defined in the General Clauses Act and should not be given a restrictive meaning attached to the word "sign" in the Act. I am, however, of the view that this contention is without any force. The word "subscribe" is used in Section 33 at two other places, *viz.*, in proviso to sub-section (2), providing that if the same person is entered in the Electoral Roll of two or more Constituencies, he "shall not be entitled to *subscribe* as a proposer or seconder more than one nomination paper"; and in sub-section (3) according to which a nomination paper has to be accompanied by "a declaration in writing *subscribed* by the candidate" about the appointment of election agents. Again derivatives of both the words "subscribe" and "sign" are used in Clauses (c) and (e) of sub-section (2) of Section 36, which run as follows:—

> (c) that a proposer or seconder is disqualified from *subscribing* a nomination paper under sub-section (2) of Section 33;
>
> (e) that the *signature* of the candidate or any proposer or seconder is not genuine or has been obtained by fraud.

Again in Section 36(7) Clauses (a) and (b) the word "subscribe" is used. Section 37 dealing with withdrawal of candidature also provides withdrawal by writing "*subscribed* by candidate".

Section 39(4) proviso mentions about a person "qualified to *subscribe*".

Sections 44 and 48 dealing with revocation of appointment of an election agent and polling agent respectively, however, require the same to be done by a writing "*signed* by the candidate etc.".

The use of the words "subscribe" and "sign" in the various sections of the Act, as given above, is a clear indication that the two words are being used as synonyms, and both of them must be ascribed the same meaning. If the suggestion referred to above were to be accepted, then wherever the word "subscribe" is used it would be sufficient for a thumb mark to be put without the same being authenticated but where the word "sign" is used, such a mark would have to be authenticated as prescribed. This would mean that while the declaration about the appointment of an election agent and the important act of withdrawal of candidature, may be done by a writing bearing an unauthenticated thumb mark, yet a much lesser important document, *i.e.*, one of revocation or reappointment of the election agent or of the polling agent, must be done by a thumb mark duly authenticated.

Again in the rules word used is "sign". Rules 12 and 13 deal with the appointment of a polling and a counting agent respectively. The writings, by which these minor appointments are to be made, must necessarily be made by a writing bearing authenticated thumb-marks. It is not possible to hold that the legislature meant to provide different method of execution and authentication for the various documents more or less of the same type, and particularly that the most important of the documents, namely the nomination form and the declaration, appointing the Election Agent should be by a thumb-mark without authentication while the others lesser important documents must bear an authentication.

Moreover section 33 provides for a nomination paper to be completed in the prescribed form and the form is prescribed by rule 4 and it is given in Schedule II. Columns 12 and 16 of this Form require the "signature" of the proposer and the seconder respectively to be appended against them. The various declarations that follow also require "signature" of the candidate. This form of nomination, therefore, would be incomplete without the "signatures" of the candidate, the proposer and the seconder. These "signatures" must, in accordance with the definition of the word "sign" given in the Act, mean, in case of illiterate persons, marks authenticated in the manner prescribed by the rules.

Under Section 36(2)(e) the Returning Officer may reject a nomination paper if the "signature" of the candidate or any proposer or seconder is not genuine. Here again "signature" must necessarily mean "signature" in accordance with the definition of "sign" in the Act, and if there is a thumb-mark not authenticated in the prescribed manner, there is no "signature" in the eye of law and the nomination paper must be rejected.

It is obvious, therefore, that to interpret "subscribe" as meaning anything different from "sign", as used in the Act and the Rules, would lead to absurd results. Both these words must, therefore, be taken to mean one and the same thing, and have to be interpreted in the light of the definition given in the Act and in accordance with the Rules. No doubt it would have been better, from the point of view of legal interpretation, if the same word had been used to convey the same meaning, but the mere fact of the use of the two different words (both of which are synonyms having the same dictionary meaning) instead of one and the same word throughout the statute, does not necessarily mean that they are used to convey different meaning. It appears that the choice of the particular word was guided more by the construction of the sentence, in which it was used, rather than anything else.

The object of providing the *marks*, put by illiterate persons, being authenticated, is quite obvious and understandable. It is only to minimise chances of forgery and wrongful obtaining of thumb-impressions of illiterate persons on important documents dealt with during the Election. This was of great importance during the first General Elections, held on the basis of adult franchise, by which, for the first time, majority of illiterate persons were given the right, not only to vote, but also to stand as Candidates for the Legislatures of the Country. This provision is definitely for the protection of the rights and interests of the illiterate elector and in no way takes away or is derogatory to the right of franchise and equality conferred on them, by the Constitution.

The petitioner led evidence of some of his proposers and seconders as well as those of other persons including some of the candidates. The sum total of their entire evidence is that all the four nomination papers were completed outside the Court Room of the Returning Officer at Ambala Cantonment and the nomination papers, duly completed, were taken inside by the petitioner and handed over to the Returning Officer; that the Returning Officer, examined these papers, but raised no objection, and after entering thereon the time of handing over, gave them to his Reader, informing the petitioner that the scrutiny would take place on the 9th of November, 1951. It is further stated that at the time when the petitioner handed over the papers, his proposers and seconders were inside the Court Room and that the petitioner brought it to the notice of the Returning Officer that they were so present. The Returning Officer, Mr. Bansal, Cantonment Magistrate, was examined by the respondent as R.W. 13, and he denied the factum of the petitioner bringing to his notice the presence of his proposers and seconders, as alleged. However, even if the evidence of the petitioner in this respect is believed that would, in my opinion, make no difference. Under subsection (5) of Section 33 of the Act the duty of a Returning Officer, on presentation of a nomination paper, is to satisfy himself that the names and electoral roll numbers of the candidate and his proposer and seconder, as entered in the nomination papers, are the same as those entered in the electoral roll, and he is authorised to permit clerical errors to be rectified or order them to be over looked. It is, therefore, no part of his duty to point out the fact whether the

nomination paper was, in other respects, complete or not. Furthermore the authentication of the marks, put by an illiterate proposer or seconder, is to be made in the manner prescribed in sub-rule (2) of Rule 2 as discussed above, and that requires the *putting of the thumb mark in the* presence of the Officer concerned. Even if the proposers and the seconders were present with the petitioner at the time of his handing over his nomination papers that would not be equivalent to their putting their thumb marks in the presence of that officer. Moreover it is not the case of the petitioner at all that he requested the Returning Officer to authenticate the thumb marks put on the nomination papers by his proposers and seconders. It is obvious that the Returning Officer would have certainly done the needful if such a request had been made and thumb marks had been offered to be put in his presence. We find on the record and it is in the evidence of the Returning Officer that the authenticated thumb marks of the proposers and the seconders of some of the nomination papers of other candidates, who had, apparently, made a request in this behalf.

There is further evidence led by the petitioner that on the date of scrutiny his proposers and seconders were again present in the Court Room and on an objection being taken by the counsel for Shri Ram Parkash, respondent No. 1, Shri Inder Lal Manchanda, who appeared as a counsel for the petitioner at the time of the scrutiny, informed the Returning Officer that the proposers and seconders were present in Court and that he could verify from them that they had thumb marked the nomination papers. The Returning Officer in his evidence stated that this was not a fact. Even if this be so that would again make no difference. A nomination paper has to be properly subscribed at the time when it is delivered and a mere acknowledgment by the proposers and the seconders, at a later date, would be of no avail.

The main argument of the learned counsel for the petitioner, however, was that word "mark", used in sub-rule (2) of Rule 2, does not include a "thumb mark". He contended that a thumb mark could easily be identified and that there was hardly any necessity for getting such a mark authenticated. He urged that the reason for making this Rule obviously was to fix the identity of the proposer or seconder and that there could be no dispute about this when a person writes his name or puts his thumb mark because in either case, by comparing the hand writing or the thumb impressions, the science of which is fairly well advanced, it can easily be found out whether the signatures or the thumb impressions are of the persons who had purported to have signed or thumb marked. No doubt the reasoning of the learned counsel sounded quite plausible, yet it is difficult to read the word "thumb mark" as equivalent to writing ones' name. Clause (k) of sub-section (1) of Section 2 of the Act clearly lays down that, in the case of a person, who is not in a position to write, the authentication must be in the manner prescribed, and sub-rule (2) of Rule 2 is the only provision prescribing method for such an authentication and consequently it must be held that this provision covers all types of marks put by a person unable to write his name. Even in the General Clauses Act, "mark" is used to cover all types of marks and thumb mark is not separately dealt with. I have, therefore, no hesitation in holding that the word "mark" in sub-rule (2) of Rule 2 does include "thumb mark" and that the nomination papers, filed by the petitioner, were not "signed" by the proposer and seconder within the meaning of Clause (k) of Section 2 of the Act read with Rule 2(2); and, therefore, not "subscribed" as required by sub-section (1) of Section 33 of the Act.

The Returning Officer rejected them under clause (d) of sub-section (2) of Section 36 for failure to comply with Section 33 of the Act. The learned counsel for the petitioner, however, argued that even if the nomination papers be taken not to have been completed strictly in accordance with the provisions of Section 33, the defect was of a technical nature and was not of a substantial character and that in view of sub-section (4) of Section 36 of the Act, the Returning Officer was not justified in rejecting the same. It was further argued that most of the important instructions with regard to the filing of the nomination papers are given as foot notes in the Form prescribed Schedule II (form 8 under Rule 29), and that this direction about the attestation of the "thumb mark" is not given there and that consequently this rule about attestation could only be a directory and not mendatory one, the non-compliance of which should not entail the penalty of the rejection of the nomination paper.

In my view, the mere fact, that this particular rule is not reproduced in the form prescribed, may be unfortunate, but will not affect the question whether the non-compliance with this Rule is a mere technical defect or not. We heard the Advocate General of the Punjab State, on this point and he conceded that the defect, in question, was not at all of a technical nature and that it went to

the root of the validity of a nomination paper. He contended that if a nomination paper is not signed either by the proposer or by the seconder or by the candidate then, in a way, there is no nomination paper in the eye of law. It is merely a Form duly filled in but not subscribed and, therefore, to all intents and purposes, a blank nomination form and therefore, a waste paper. In case of an illiterate person the only way in which the nomination paper could be "subscribed" was in the manner laid down in sub-rule (2) of Rule 2 and as none of the nomination papers, filed by the petitioner, was so subscribed, there was no nomination paper in the eye of law proposing the name of the petitioner. There is a great deal of force in this argument. The requirement, with regard to authentication, goes to the very root of the validity of the nomination paper and by no stretch of imagination can be treated to be a technical defect much less "a technical defect not of substantial character".

In view of the discussion above, I am clearly of the view, that the nomination papers were rightly rejected by the Returning Officer under Section 33(2)(4) of the Act. This petition, therefore, fails and is dismissed. Parties to bear their own costs *inter se*. Advocate-General's fee assessed at Rs. 100, because he argued the point raised in this case on the same day, on which he argued another petition (Shri Sohan Lal *Versus* Shri Abnash Chander etc.), for which petition he was primarily summoned. Government Pleader's fee assessed at Rs. 50.

(Sd.) HARBANS SINGH, *Chairman*,
Election Tribunal, Ludhiana.

June 24, 1953.

Ch Atma Ram Vs. Shri Ram Parkash etc.

ORDER OF THE TRIBUNAL.

By majority it is held that the nomination papers of Shri Atma Ram were improperly rejected and that this has materially affected the election in dispute and the same is hereby declared as wholly void.

In the peculiar circumstances, the parties are left to bear their own costs. The respondents 1 and 2 shall, however, pay in equal shares Rs. 100 (one hundred only) as costs to the Advocate-General, Punjab, and Rs. 50 to the Local Government Pleader, who assisted him in these proceedings.

(Sd.) HARBANS SINGH, *Chairman*.

(Sd.) HANS RAJ KHANNA, *Judicial-Member*.

(Sd.) P. N. SACHDEVA, *Advocate-Member*.

June 24, 1953.

Announced in open Court. None present.

(Sd.) HARBANS SINGH, *Chairman*,—24-6-1953.

(Sd.) HANS RAJ KHANNA,—24-6-1953.

(Sd.) P. N SACHDEVA,—24-6-1953.

ANNEXURE I

IN THE SUPREME COURT OF INDIA, CIVIL APPELLATE JURISDICTION

CIVIL APPEALS NOS. 312A AND 213B OF 1953

Rattan Anmol Singh and Ram Prakash—*Appellants*.

Versus

Ch. Atma Ram and others—*Respondents*.

Appeals by Special Leave granted by this Court on the 11th November 1953 against the Judgment and Order dated the 24th June 1953 of the Election Tribunal, Ludhiana in Election Petition No. 153 of 1952.

The 21st day of May, 1954

PRESENT

The Hon'ble Mr. Justice Bijan Kumar Mukherjea.

The Hon'ble Mr. Justice Vivian Bose.

The Hon'ble Mr. Justice T. L. Venkatarama Ayyar.

For the Appellant in Civil Appeal No. 213-A—Mr. C. K. Daphtary, Solicitor-General for India (Messrs. Harbans Singh Doabia and Rajindar Narain, Advocates, with him).

For Respondent No. 2 in Civil Appeal No. 213A and Appellants in Civil Appeal No. 213B.—Messrs. Tilak Raj Bhasin and Harbans Singh, Advocates.

For Respondents Nos. 3 and 19 (in both Appeals).—Mr. Maunit Lal, Advocate.

JUDGMENT

The Judgment of the Court was delivered by—

Bose, J.—These are two appeals against the decision of the Election Tribunal at Ludhiana.

The contest was for two seats in the Punjab Legislative Assembly. The constituency is a double member constituency, one seat being general and the other reserved for a scheduled caste. The first respondent is Atma Ram. He was a candidate for the reserved seat but his nomination was rejected by the Returning Officer at the scrutiny stage and so he was unable to contest the election. The successful candidates were Rattan Anmol Singh, the appellant in Civil Appeal No. 213-A of 1953, for the general seat and Ram Prakash, the appellant in Civil Appeal No. 213-B of 1953, for the reserved. Atma Ram filed the present election petition. The Election Tribunal decided in his favour by a majority of two to one and declared the whole election void. Rattan Anmol Singh and Ram Prakash appeal here.

The main question we have to decide is whether the Returning Officer was right in rejecting the petitioner's nomination papers. The facts which led him to do so are as follows. The Rules require that each nomination paper should be "subscribed" by a proposer and a seconder. The petitioner put in four papers. In each case, the proposer and seconder were illiterate and so placed a thumb mark instead of a signature. But these thumb marks were not "attested". The Returning Officer held that without "attestation" they are invalid and so rejected them. The main question is whether he was right in so holding. A subsidiary question also arises, namely, whether, assuming attestation to be necessary under the Rules, an omission to obtain the required attestation amounts to a technical defect of an unsubstantial character which the Returning Officer was bound to disregard under section 36(4) of the Representation of the People Act, 1950 (XLIII of 1950).

> "Section 33(1) of the Act requires each candidate to deliver to the Returning Officer..... ...a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination and by two persons referred to in sub-section (2) as proposer and seconder."

Sub-section (2) says that—

> "any person whose name is registered etc.....may subscribe as proposer or seconder as many nomination papers as there are vacancies to be filled..... ....."

The controversy centres on the word "subscribed" which has not been defined in the Act.

The prescribed nomination form referred to in sub-section (I) of section 33 is to be found in Schedule II, in this form we have the following:—

> "9. Name of the Proposer
>
> .....
>
> 12. Signature of the proposer
>
> 13. Name of the seconder
>
> .....
>
> 16. Signature of the seconder."

The Oxford English Dictionary sets out thirteen shades of meaning to the word "subscribe", most of them either obsolete or now rarely used. The only two which can have any real relation to the present matter are the following:

> 1. "To write (one's name or mark) on, originally at the bottom of a document, especially as a witness or contesting party; to sign one's name to."

This meaning is described as "rare".

2. "To sign one's name to; to signify assent or adhesion to by signing one's name; to attest by signing".

This appears to be its modern meaning, and is also one of the meanings given to the word "sign", namely "to attest or confirm by adding one's signature; to affix one's name to (a document) etc.".

One also finds the following in Stroud's Judicial Dictionary, 3rd edition: "Subscribed. (1) 'Subscribed' means to write under something in accordance with prescribed regulations where any

such exist . ...But though this is the strict primary meaning of the word, it may sometimes, *e.g.*, in the attestation of a will, be construed as "to give assent to, or to attest" or 'written upon'.....

"(3) 'Subscription is a method of signing; it is not the only method'; a stamped, or other mechanical impression of a signature is good, in the case of electioneering papers."

It is clear that the word can be used in various senses to indicate different modes of signing and that it includes the placing of a mark. The General Clauses Act also say that—

"'sign'.....with reference to a person who is unable to write his name, includes 'mark'".

But this is subject to there being nothing repugnant in the subject or context of the Act. In our opinion, the crux of the matter lies there. We have to see from the Act itself whether "sign" and "subscribe" mean the samething and whether they can be taken to include the placing of a mark. The majority decision of the Tribunal holds that "sign" and "subscribe" are not used in the same sense in the Act because a special meaning has been given to the word "sign" and none to the word "subscribe", therefore, we must use "subscribe" in its ordinary meaning; and its ordinary meaning is to "sign" but not to "sign" in the special way prescribed by the Act but in the ordinary way; therefore we must look to the General Clauses Act for its ordinary meaning and that shows that when it is used in its ordinary sense it includes the making of a mark.

We agree with the learned Chairman of the Tribunal that this is fallacious reasoning. The General Clauses Act does not define the word "subscribe" any more than the Representation of the People Act, and if it is improper to exclude the special meaning given to "sign" in the Representation of the People Act because the word "sign" is defined and not "subscribe", it is equally improper to import the special definition of "sign" in the General Clauses Act because that also defines only "sign" and not "subscribe", and also because the "subject" and "context" of the Representation of the People Act show that the writing of a signature and the making of a mark are to be treated differently.

The learned counsel for the respondent analysed the Act for us and pointed out that the word "subscribe" is only used in Chapter I of the Part V dealing with the Nomination of Candidates while in every other place the word "sign" is used. We do not know why this should be unless, as was suggested by the learned Solicitor-General, the legislature wished to underline the fact that the proposer and seconder are not merely signing by way of attesting the candidate's signature to the nomination form but are actually themselves putting the man forward as a suitable candidate for election and as a person for whom they are prepared to vouch, also that the candidate's signature imports more than a mere vouching for the accuracy of the facts entered in the form. It imports assent to his nomination. We think the learned Solicitor-General is probably right because section 33 speaks of

"a nomination paper completed in the prescribed form and subscribed by the candidate himself as assenting to the nomination".

But however that may be, it is evident from the form that "signatures" are required. It is also evident from the definition of "sign" that the legislature attached special importance to the fact that in the case of illiterate persons unable to write their names it is necessary to guard against misrepresentation and fraud by requiring that their signatures should be formally authenticated in a particular way. A special statutory cloak of protection is thrown around them just as the ordinary law clothes pardanishin women and illiterate and ignorant persons and others likely to be imposed on, with special protective covering.

Now it is to be observed that section 2 calls itself an "interpretation" section. It says—

> "(I) In this Act, unless the context otherwise requires .. ..
> (k) 'sign' in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed."

It is evident then that wherever the element of "signing" has to be incorporated into any provision of the Act it must be construed in the sense set out above. Therefore, whether "subscribe" is a synonym for "sign" or whether it means "sign" plus something else, namely a particular assent, the element of "signing" has to be present: the Schedule places that beyond doubt because it requires certain "signatures". We are consequently of opinion that the "signing", whenever a "signature" is necessary, must be in strict accordance with the requirements of the Act and that where the signature cannot be written it must be authorised in the manner prescribed by the Rules. Whether this attaches exaggerated importance to the authorisation is not for us to decide. What is beyond dispute is that this is regarded as a matter of special moment and that special provision has been made to meet such cases. We are therefore bound to give full effect to this policy.

Now if "subscribe" can mean both signing, properly so called, and the placing of a mark (and it is clear that the word can be used in both senses), then we feel that we must give effect to the general policy of the Act by drawing the same distinction between signing and the making of a mark as the Act itself does in the definition of "sign". It is true the word "subscribe" is not defined but it is equally clear, when the Act is read as a whole along with the form in the second Schedule, that "subscribe" can only be used in the sense of making a signature and as the Act tells us quite clearly how the different types of "signature" are to be made, we are bound to give effect to it. In the case of a person who is unable to write his name his "signature" must be authenticated in "such manner as may be prescribed". The prescribed manner is to be found in Rule 2(2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. It runs as follows:—

> "For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the presiding officer or such other officer as may be specified in this behalf by the Election Commission and such officer on being satisfied as to his identity has attested the mark as being the mark of such person".

In view of this we are clear that attestation in the prescribed manner is required in the case of proposers and seconders who are not able to write their names.

The four nomination papers we are concerned with were not "signed" by the proposers and seconders in the usual way by writing their names, and as their marks are not attested it is evident that they have not been "signed" in the special way which the Act requires in such cases. If they are not "signed" either in one way or the other, then it is clear that they have not been "subscribed" because "subscribing" imports a "signature" and as the Act sets out the only kinds of "signatures" which it will recognise as "signing" for the purposes of the Act, we are left with the position that there are no valid signatures of either a proposer or a seconder in any one of the four nomination papers The Returning Officer was therefore bound to reject them under section 36(2)(d) of the Act because there was a failure to comply with section 33, unless he could and should have had resort to section 36(4).

That sub-section is as follows:

> "The Returning Officer shall not reject any nomination paper on the ground of any technical defect which is not of a substantial character."

The question therefore is whether attestation is a mere technical or unsubstantial requirement. We are not able to regard it in that light. When the law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there. The substance of the matter here is the satisfaction of the Returning Officer at a particular moment of time about the identity of the person making a mark in place of writing a signature. If the Returning Officer had omitted the attestation because of some slip on his part and it could be proved that he was satisfied at the proper time, the matter

might be different because the element for his satisfaction at the proper time, which is of the substance, would be there, and the omission formally to record the satisfaction could probably, in a case like that, be regarded as an unsubstantial technicality. But we find it impossible to say that when the law requires the satisfaction of a particular officer at a particular time his satisfaction can be dispensed with altogether. In our opinion, this provision is as necessary and as substantial as attestation in the cases of a will or a mortgage and is on the same footing as the "subscribing" required in the case of the candidate himself. If there is no signature and no mark the form would have to be rejected and their absence could not be dismissed as technical and unsubstantial. The "satisfaction" of the Returning Officer which the Rules require is not, in our opinion, any the less important and imperative.

The next question is whether the attestation can be compelled by the persons concerned at the scrutiny stage. It must be accepted that no attempt was made at the presentation stage to satisfy the Returning Officer about the identity of these persons but evidence was led to show that this was attempted at the scrutiny stage. The Returning Officer denies this, but even if the identities could have been proved to his satisfaction at that stage it would have been too late because the attestation and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated any more than the omission of a candidate to sign at all could have been. Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been—

"any failure to comply with any of the provisions of section 33".

The only jurisdiction the Returning Officer has at the scrutiny stage is to see whether the nomination are in order and to hear and decide objections. He cannot at that stage remedy essential defects or permit them to be remedied. It is true he is not to reject any nomination paper on the ground of any technical defect which is not of a substantial character but he cannot remedy the defect. He must leave it as it is If it is technical and unsubstantial it will not matter. If it is not, it cannot be set right.

We agree with the Chairman of the Election Tribunal that the Returning Officer rightly rejected these nomination papers. The appeals are allowed with costs and the order of the Election Tribunal declaring the elections of the two successful candidates to be wholly void is set aside. The election petition is dismissed, also with costs.

(Sd.) B. K. MUKHERJIEA J.

(Sd.) VIVIAN BOSE J.

(Sd.) T. L. VENKATARAMA AYYAR J.

The 21st May, 1954.

[No. 19/153/52-Elec.III/15711.]

K. S. RAJAGOPALAN, Asstt. Secy.

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